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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of

SCRIPPS HOWARD  
BROADCASTING COMPANY

For Renewal of License of  
Station WMAR-TV,  
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For Construction Permit for a  
New Television Facility on  
Channel 2 at Baltimore,  
Maryland

) MM Docket No. 93-94

) File No. BRCT-910603KX

) File No. BPCT-910903KE

To: The Honorable Richard L. Sippel  
Administrative Law Judge

OPPOSITION TO "MOTION FOR LEAVE TO AMEND AND AMENDMENT TO  
SCRIPPS HOWARD'S LIST OF PARTY WITNESSES ON RENEWAL EXPECTANCY"

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys and pursuant to Section 1.294 of the Commission's Rules, hereby opposes the "Motion for Leave to Amend and Amendment to Scripps Howard's List of Party Witnesses on Renewal Expectancy" ("Motion") filed on June 28, 1993 by Scripps Howard Broadcasting Company ("Scripps Howard"). As set forth below, Scripps Howard's attempt to "amend" its list of party witnesses in support of its claimed renewal expectancy violates the

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prehearing schedule set forth by the Presiding Judge, and should therefore be denied.

1. On June 7, 1993, the Presiding Judge issued an Order, FCC 93M-337, setting forth the prehearing discovery schedule in this case. That Order specifically provided that by June 18, 1993,

Scripps Howard shall file and hand-serve a list of its party witnesses who will testify and/or sponsor documents relating to renewal expectancy. Each witness will be identified by full name and a brief description of the nature and purpose for the testimony shall be stated.

Order at 2.

2. On June 18, 1993, on the deadline established by the Judge, Scripps Howard submitted its list of party witnesses on renewal expectancy. That list contained two names: (i) Terry H. Schroeder, Vice President of Scripps Howard; and (ii) Arnold J. Kleiner, presently the Vice President of Scripps Howard and General Manager of WMAR-TV.

3. Ten days after the Judge's deadline, however, Scripps Howard has now filed its instant Motion. That Motion adds yet another witness who plans to testify in support of Scripps Howard's claimed renewal expectancy: "Emily Barr, Assistant General Manager of WMAR-TV."

4. There is absolutely no conceivable justification for Scripps Howard, in the midst of a busy phase in the prehearing schedule, to name an additional party witness on renewal expectancy ten days after the date on which it was to have

disclosed all such witnesses. Scripps Howard's claimed justification for this "amendment" is the impending July 16 departure of Mr. Kleiner from the employ of Scripps Howard and WMAR-TV. Yet Mr. Kleiner's resignation has no apparent connection whatsoever with Scripps Howard's belated addition of Ms. Barr to the witness list -- indeed, Scripps Howard makes clear in its Motion that it still intends to rely on Mr. Kleiner's testimony notwithstanding his imminent departure from WMAR-TV.<sup>1/</sup>

5. Ms. Barr, by Scripps Howard's own reckoning, is apparently competent to testify as to "WMAR-TV's ascertainment efforts and its programming response to ascertained community needs" during the relevant renewal period in 1991. Thus, she obviously has been with the station a number of years, and Scripps Howard clearly knew (or should have known) of her role at the station during the renewal period from the very beginning of this proceeding. There simply is no reason why Ms. Barr could not have been identified as a witness in a timely fashion. Compounding matters, Scripps Howard's Motion makes clear that Scripps Howard will call still more witnesses in the future should it so desire:

In the event that Scripps Howard determines that other witnesses will be needed to testify concerning renewal

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<sup>1/</sup> Four Jacks has noticed Mr. Kleiner, Ms. Barr and Mr. Schroeder for deposition. Four Jacks' noticing of Ms. Barr for deposition, however, should in no way be construed as conceding that Ms. Barr should be permitted as a witness on behalf of Scripps Howard.

expectancy or to sponsor documents, it will promptly notify the Presiding Judge and the parties.

Motion at 2.

6. The Presiding Judge emphasized at the prehearing conference that each applicant should know of its opponent's supporting party witnesses at the earliest possible time. Thus, the Judge established a firm date for the identification of such witnesses. Scripps Howard is ignoring the Judge's deadline, identifying an additional supporting witness ten days past the deadline for doing so, and even reserving the right to call still further witnesses in a belated fashion. Such conduct wreaks havoc upon an orderly discovery process and prejudices Four Jacks in its preparation for hearing. Scripps Howard's apparent unwillingness to comply with the Judge's witness identification deadline should not be countenanced, and accordingly, Four Jacks requests the Presiding Judge to rule that Emily Barr may not testify in this proceeding on behalf of Scripps Howard.

Respectfully submitted,

FOUR JACKS BROADCASTING, INC.

CERTIFICATE OF SERVICE

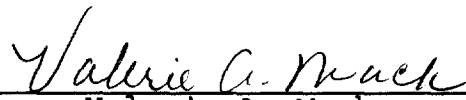
I, Valerie A. Mack, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "OPPOSITION TO 'MOTION FOR LEAVE TO AMEND AND AMENDMENT TO SCRIPPS HOWARD'S LIST OF PARTY WITNESSES ON RENEWAL EXPECTANCY'" were sent this 2nd day of July, 1993, by first class United States mail, postage prepaid, to the following:

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